S.B. Civil Writ Petition No.3421/05

12.01.2007

Hon'ble Mr. Justice Mohammad Rafiq

Mr. Manish Bhandari for petitioner.
Mr. B.S. Chhaba, Dy. GA for State.

The controversy raised in this petition is whether the degree of Bachelor of Physical Education by itself make the petitioner eligible for appointment on the post of Physical Teacher Gr.II.

The learned counsel for the parties are at idem that the present controversy is squarely covered by the judgment of Division Bench of this Court in D.B. Civil Special Appeal (W) No.815/99 decided on 13.9.2000 which was later followed in a bunch of petitions by co-ordinate bench of this Court. The

Division Bench in the said case while upholding the judgment of learned Single Judge has concurred with the view taken therein that the candidates possessing degree of Bachelor of Physical Education are eligible for appointment on the post of Teacher Gr.II in terms of the Rajasthan Educational Sub-ordinate Service Rules, 1971. In fact the judgment passed by Division Bench was later upheld even by the Hon'ble Supreme Court when Special Leave to Appeal (Civil) No.2560/01 filed thereagainst was rejected on 23.2.2001.

The present appeal is accordingly allowed in terms of the aforesaid Division Bench judgment with the direction to the respondents to consider the case of the petitioner for appointment on the post of Physical

Teacher Gr.II and if eventuality it is found that the candidate/candidates lower than him in merit have been appointed, the respondents are directed to consider the case of the petitioner for appointment and are further directed to appoint him w.e.f. the date the candidate immediately below him in the merit secured such appointment. The petitioner would be entitled to only notional benefits and not for the arrears of the salary for the intervening period. He would however be entitled to count the seniority from the date such candidate lower than him in the merit was appointed. Compliance of the judgment be made within three months from the date of copy of judgment is served upon him.

(Mohammad Rafiq),J.

Rs/-